

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION - CINCINNATI**

REBECCA BREITENSTEIN,	:	Case No. 1:19-cv-413
	:	
Plaintiff,	:	Judge Matthew W. McFarland
	:	
vs.	:	
	:	
ERIC C. DETERS, et al.,	:	
	:	
Defendants.	:	
	:	

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**ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. 9), GRANTING  
MOTIONS TO DISMISS (DOCS. 3, 4) AND TERMINATING CASE**

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This legal malpractice action is before the Court on the Report and Recommendation (Doc 9) of United States Magistrate Judge Stephanie K. Bowman. Magistrate Judge Bowman recommends that the Court grant Defendants' Motions to Dismiss for lack of subject matter jurisdiction and either dismiss or stay the case. In response to the Report and Recommendation, Plaintiff requests that the Court stay this case, rather than dismiss it, because she is represented in the underlying litigation by separate counsel, "who was hired by Defendants but is not a part of that law firm." (Doc. 10.)

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Plaintiff alleges that Defendants committed legal malpractice in a lawsuit that she brought in the Hamilton County Court of Common Pleas at Cincinnati, Ohio. That court dismissed Plaintiff's

claims—a decision that she has appealed. Because the appeal is still pending, Plaintiff's claims are not ripe and the Court does not have subject matter jurisdiction. It is unclear whether any of Plaintiff's claims in this case will still be viable if she is successful in her state court appeal. In these circumstances, dismissal of the action, rather than a stay, is proper. This is not a case where the Court can be assured that, pending the completion of a future event, there will be a case or controversy within its subject matter jurisdiction. Accordingly, the Court **ADOPTS** the Report and Recommendation (Doc. 9), **GRANTS** Defendants' Motions to Dismiss (Docs. 3, 4), and **DISMISSES** this action **WITHOUT PREJUDICE**. This case is hereby **TERMINATED** on the Court's docket.

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

By:   
JUDGE MATTHEW W. McFARLAND